

Letter of Findings: 65-20200442
Indiana Overweight Proposed Assessment
For the Year 2019

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's (the "Department") official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Motor Carrier provided sufficient evidence that it should not be assessed the full civil penalty for being overweight.

ISSUE

I. Motor Vehicles - Overweight Penalty.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-1-1; IC § 9-20-1-1; IC § 9-20-1-2; IC § 9-20-4-1; IC § 9-20-18-14.5; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); [45 IAC 15-3-2](#).

Taxpayer protests the assessment of an overweight civil penalty.

STATEMENT OF FACTS

Taxpayer is a trucking company which was hauling a sealed ocean container from Illinois to Indiana. On October 1, 2019, the Indiana State Police ("ISP") examined Taxpayer's commercial motor vehicle and issued an overweight violation. Later, ISP informed the Department of the violation. As a result, the Department issued Taxpayer a proposed assessment for being overweight in the form of a "No Permit Civil Penalty." Taxpayer protested the assessment of the civil penalty. The Department held an administrative hearing, and this Letter of Findings results. Further facts will be provided as necessary.

I. Motor Vehicles - Overweight Penalty.

DISCUSSION

ISP reported that Taxpayer needed but did not obtain an overweight permit. Taxpayer was 5,120 pounds over the statutorily allowed limit for gross weight without a permit.

As a threshold issue, it is a taxpayer's responsibility to establish that the existing proposed assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "[t]he notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

The Department notes that, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

According to IC § 9-20-1-1, "[e]xcept as otherwise provided in [IC Art. 9-20], a person, including a transport operator, may not operate or move upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-1-2, the owner of a vehicle "may not cause or knowingly permit to be operated or moved upon a highway [in Indiana] a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

IC § 9-20-18-14.5 authorizes the Department to impose civil penalties against taxpayers that obtain a permit under IC Art. 9-20 and violate IC Art. 9-20 ("Permit Violation Civil Penalty") or are required, but fail, to obtain a permit under IC Art. 9-20 ("No Permit Civil Penalty"). IC § 9-20-18-14.5(c) provides that a person "who transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty . . ." According to IC § 9-20-18-14.5(b), the Department may subject a person to a civil penalty if the person "obtains a permit under" IC Art. 9-20 and violates IC Art. 9-20 by being overweight or oversize.

IC § 6-8.1-1-1 states that fees and penalties stemming from IC Art. 9-20 violations are a "listed tax." These listed taxes are in addition to and separate from any arrangement or agreement made with a local court or political subdivision regarding the traffic stop.

In this case, the Department issued Taxpayer a "No Permit Civil Penalty." According to the ISP report, Taxpayer transported a sealed ocean container at a weight that was more than the amount allowed under IC § 9-20-4-1. Taxpayer stated that it obtained a permit in January 2019 that it believed covered overweight transportation of its sealed ocean containers for the entire year.

After an initial phone call with the Department, Taxpayer states that it applied for an overweight commodity permit in January of 2019. A permit was issued, but it was not the kind of permit that would apply to the overweight penalty issued in this case. Taxpayer claims that it spoke with a member of the Department in October of 2019, who confirmed that Taxpayer was given bad advice regarding the January 2019 permit during its first phone call. Taxpayer believes the penalty should be eliminated in this case because it relied on statements made by Department employees.

The Department notes first that Taxpayer is required to have a permit for carrying loads that exceed statutory limits at the time of transport. This allows the Department to provide Taxpayer a route safe for transport. In this case, however, Taxpayer incorrectly believed that a permit obtained previously allowed them to transport this load above the statutory weight limit. Taxpayer claims that it spoke with a Department employee who gave incorrect advice.

[45 IAC 15-3-2](#)(e) establishes the treatment of oral advice by Department employees as follows:

Oral opinions or advice will not be binding upon the department. However, taxpayers may inquire as to whether or not the department will make a ruling or determination based on the facts presented by the taxpayer. If the taxpayer wishes a ruling by the department, the formal request must be in writing. A taxpayer may also orally receive technical assistance from the department in preparation of returns. However this advice is advisory only and is not binding in the latter examination of returns.

Based upon general inquiries and correspondence, the department often issues written letters of advice. Such letters are advisory in nature only and merely technical assistance tools for the taxpayer. Strictly informational type letters are not to be considered rulings by the department and will not be binding.

However, some written inquiries have asked for the tax consequences of a particular transaction, based upon the facts presented. In such instances, the department may consider such letters as rulings that may bind the department to the position stated in respect to that taxpayer only. All such rulings issued will be binding provided that all of the facts described in obtaining the ruling are true and accurate. Any misstatement of material fact or information will void the ruling.

Taxpayer did not have the correct permit at the time of the citation and did not submit evidence showing that it received incorrect information. Even if it had, however, Taxpayer is not entitled to rely on oral advice, in accordance with [45 IAC 15-3-2](#). Nonetheless, the Department understands Taxpayer's position that a misunderstanding may have led Taxpayer to obtain the incorrect permit. In addition to providing Taxpayer an opportunity to protest, IC § 9-20-18-14.5 provides "not more than" language to the Department when generating a proposed assessment amount. In this case, the Department will generate a proposed assessment with a reduced amount, as authorized by its statutory discretion and this Letter of Finding.

FINDING

Taxpayer's protest is sustained in part and denied in part.

July 6, 2021

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